

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>JAMES TOMLINSON,</b>	)	<b>CASE NO. 1:06 CV 687</b>
	)	
<b>Petitioner,</b>	)	<b>JUDGE DAN AARON POLSTER</b>
	)	
<b>vs.</b>	)	<b><u>MEMORANDUM OF OPINION</u></b>
	)	<b><u>AND ORDER</u></b>
<b>STUART HUDSON, Warden,</b>	)	
	)	
<b>Respondent.</b>	)	

Petitioner James Tomlinson challenges the constitutionality of his 2003 state drug-trafficking conviction, for which he is serving an 11-year prison sentence. In a May 29, 2007 Report and Recommendation (“R&R”) (**ECF No. 18**), Magistrate Judge Hemann concluded that (1) Tomlinson’s petition is time-barred under AEDPA; (2) Tomlinson’s untimely Rule 26(B) application to reopen did not toll the statute of limitations; and (3) Tomlinson is not entitled to equitable tolling.

After seeking and receiving an extension of time, Tomlinson filed his objections on June 21, 2007. *ECF Nos. 19-20*. He does not challenge the Magistrate Judge’s first two conclusions. His sole objection is that equitable tolling should be applied.

In a thorough and well-written R&R, the Magistrate Judge analyzed the facts of this case within the established legal framework, and concluded that Tomlinson did not meet his burden of persuading the court that he was entitled to equitable tolling, which should be used

sparingly. The Magistrate Judge rested the conclusion primarily on the ground that Tomlinson had not shown any “extraordinary circumstance” for his failure to meet the AEDPA one-year deadline. The Magistrate Judge also concluded that Tomlinson’s diligence in pursuing his claims is questionable, as he waited until one year had elapsed from the state appellate court’s decision upholding his conviction before filing his Rule 26(B) application.

The Court has carefully reviewed Tomlinson’s objections, and agrees with the Magistrate Judge’s conclusions. Further, the Court sees no need to conduct an evidentiary hearing.

Accordingly, the Court **OVERRULES** Tomlinson’s Objections, **ADOPTS** the R&R, and **DISMISSES** Tomlinson’s petition as time-barred.

**IT IS SO ORDERED.**

/s/Dan Aaron Polster June 25, 2007  
Dan Aaron Polster  
United States District Judge